IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.21735 of 2001

Between:

J.Kishan, S/o. J.Narsaiah, 45 years,
R/o. 7-1-10, Mankamma Thota,
Karimnagar.

...PETITIONER

AND

1. APSRTC, rep.by its Vice Chairman & Managing Director, Musheerabad, Hyderabad.
2. The Director, Vigilance & Security, APSRTC, Musheerabad, Hyderabad.
3. The Vigilance & Security Officer, APSRTC, Karimnagar Zone, Karimnagar.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or a direction, more particularly one in the nature of Writ of Mandamus or any other appropriate writ, declaring the proceedings dated 07.09.2000 as confirmed by the Appellate Authority and Review Authority as illegal, arbitrary and violative of principles of natural justice and consequently set aside the same by directing the respondents to reinstate the petitioner into service with back wages, continuity of service and all other attendant benefits.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: SMT.P.RAJANI REDDY, Standing Counsel

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.21735 of 2001

ORDER:

Heard Sri G.Vidyasagar, the learned counsel appearing for the petitioner and Smt.P.Rajani Reddy, the learned Standing Counsel appearing for the respondents.

The petitioner herein, who was working as a Security Guard with the respondent-corporation, filed this Writ Petition, *inter alia*, seeking for a Writ of Mandamus challenging the proceedings dated 07.09.2000, whereby the petitioner was removed from service, as bad, illegal and void. The Appellate and Review Authorities also confirmed the aforesaid proceedings.

The principal question which revolves around for consideration in this case is as to whether the petitioner was given sufficient opportunity to participate in the enquiry conducted against him.

The facts in the background are that the petitioner joined in the service with the respondent-Corporation on 05.08.1981 and had been in service as such without any blemish. However, on certain allegations, a charge sheet was issued on 26.11.1999 framing three charges against the petitioner attributing certain acts of abuse, unauthorized entry and refusal to receive the transfer order. He was placed under

suspension and thereupon an enquiry was conducted. Ultimately after issuing show cause notice, he filed Writ Petition No.10564 of 2000. The Writ Petition was dismissed on 17.08.2000 directing him to submit explanation. The final orders were passed on 07.09.2000 removing the petitioner from service holding that he is guilty of the said charges. The appeal and the review filed before the authorities were unsuccessful. Hence, the Writ Petition.

Sri G.Vidyasagar, the learned counsel appearing for the petitioner submits that the enquiry as conducted in this case is not proper, as sufficient opportunity was not given to the petitioner. The report of the Enquiry Officer reads as follows:

> The Security Guard is directed to attend the enquiry once on 29.01.2000 informed him vide this Office Lr.No.even dated 18.01.2000 he has not attended enquiry in spite of acknowledging the receipt of the same. He was again directed to attend enquiry on 04.02.2000 vide this Office Lr.No.even dated 28.01.2000 the letter sent to him is returned to this Office stating the addressee is absent for 7 days. Hence, the statements of the Security Officer, Karimnagar Zone, S/Sri M.Harikishan, Chief Security Inspector, Karimnagar Region, G.Madhusudhan, SSI, WL Region, V.Shiva Prabhu, SSI ZWS:Karimnagar, T.Bhav Rao, SSI, KR Region and M.Yadagiri, SI, ZWS:Karimnagar were recorded in his absence deeming that he has accepted their statements. But on his special request he was given chance to cross examine Sri V.Shiva Prabhu, SSI ZWS:KR and Sri T.Bhav Rao, SSI, KR Region.

From the above, it is evident that the key witnesses were not submitted for cross examination and no explanation is forthcoming for withholding them. Hence, the entire enquiry is vitiated.

Smt.P.Rajani Reddy, the learned Standing Counsel appearing for the respondent-Corporation sought to sustain the impugned action on the part of the petitioner herein with the entire findings during the course of the enquiry as the petitioner himself is responsible for his absence and further the petitioner was given

due opportunity to cross examine the witnesses who were available at the relevant point of time and therefore, it is not open for him to make any complaint against the respondent-Corporation.

Considering the submissions made on both sides and on perusal of the material available on record, the main aspect revolves around the question as to whether the petitioner was given sufficient opportunity.

As rightly contended by the petitioner, the very paragraph that has been extracted from the enquiry report shows that initially, show cause notice was issued on 18.01.2000 fixing the date of enquiry on 29.01.2000, on which date, the petitioner did not attend. Thereafter, once again another notice dated 28.01.2000 was issued fixing the date of enquiry on 04.02.2000 and the same was returned unserved with a postal endorsement that the addressee was absent for seven days. Therefore, the enquiry officer had proceeded with the examination of the witnesses, which also included the Sri M.Harikishan, Security Officer concerned and the Chief Security Inspector namely Sri G.Madhusudhan. However, as evident from their evidence, though all the said witnesses including the aforesaid two persons were examined, ultimately the request made by the petitioner to cross examine them was permitted only with respect to the two witnesses namely Sri V.Shiva Prabhu and Sri T.Bhav Rao. In fact, according to the learned counsel appearing for the petitioner, these witnesses submitted the case of the petitioner on their cross examination. Further, subsequently there is no explanation forthcoming as to why the aforesaid key witnesses namely M.Harikishan and G.Madhusudhan were not produced or submitted to cross examination by the petitioner and no reason is shown in the

entire enquiry report or the final proceedings to justify the non-production of these two important witnesses for cross examination. The case of the petitioner is that by such non-production and no opportunity having been given for cross examination, the entire enquiry gets vitiated. In fact, the findings as given in respect of the charges virtually rest on the evidence given by those two important witnesses and does not squarely rest only on the other two witnesses namely V.Shiva Prabhu and T.Bhav Rao. In the circumstances, it is to be held that the non-production of the witnesses is quite fatal and it virtually amounts to not providing due and sufficient opportunity to the petitioner. In spite of the fact that the final orders were passed and the same were confirmed in the appeal and review, these aspects have not been kept in view nor any finding is given in this regard. In the circumstances, it is to be held that the matter requires to be enquired into again after giving due and sufficient opportunity to the petitioner.

The Writ Petition is accordingly allowed. The impugned order dated 07.09.2000 as confirmed in the appeal and the review respectively is set aside. The matter is remitted to the Enquiry Officer with a direction to conduct fresh enquiry by permitting the petitioner to cross examine the two witnesses namely M.Harikishan and G.Madhusudhan, the Security Officer and the Chief Security Inspector respectively and also permit him to lead any evidence if he wishes and finalize the same. It shall be open to the competent authority concerned to take action on merits in accordance with law after giving due notice and sufficient opportunity to the petitioner as per the regulations.

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(B.PRAKASH RAO, J)

30th March 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Thirtieth day of March Two thousand and five.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Vice Chairman & Managing Director, APSRTC, Musheerabad,

Hyderabad.

2. The Director, Vigilance & Security, APSRTC, Musheerabad, Hyderabad.

3. The Vigilance & Security Officer, APSRTC, Karimnagar Zone, Karimnagar.

4. Two CD copies.